IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
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CRIMINAL REVISION APPLICATION No 494 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1,2 and 5 Yes
3 and 4 No

KIRITSINH BHAGVANSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:
Mr.N.N.Gandhi for MR DK DESAI for Petitioners
Mr.K.C.Shah,learned Addl.P.P.
for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA
Date of decision: 13/11/97

ORAL JUDGEMENT

1. Petitioners herein were charge-sheeted and charges were framed against them under Sections 7, 12, 13(1)(D) and 13(2) of the Prevention of Corruption Act, 1988 (which will hereinafter be referred to as 'the Act'). While the case was at the stage of recording prosecution evidence, an application dated 2.9.97 was

moved on behalf of the petitioners stating therein that the prosecution had not obtained the previous sanction for their prosecution and that they could not be prosecuted in absence of previous sanction and,therefore, they may be acquitted. This application Exh.11 was decided by the Special Judge, City Civil Court No.10, Ahmedabad by order dated 24.9.97, who has dismissed the application. Aggrieved from this order dated 24.9.97 passed by the Special Judge, City Civil Court No.10, Ahmedabad in Special Case No.25 of 1995 this Criminal Revision Application has been filed under S.397 of Cr.P.C. read with S.27 of the Act.

2. Petitioners were serving as Home Guards. Pursuant to a trap arranged by the Anti Corruption Police, they have been facing the criminal case on the basis of the F.I.R. dated 21.1.95 in which the charge-sheet was filed on 5.7.95. In the meantime, they were removed from the post of Home Guard on 1.2.95.

3. In support of the application dated 2.9.97 it was argued before the Special Judge that according to S.19 of the Act previous sanction for their prosecution had not been obtained and, therefore, they cannot be prosecuted. S.19 of the Act is reproduced as under:

"19. Previous sanction necessary for prosecution. (1) No court shall take cognizance of an offence punishable under Sections,7, 10,11, 13 and 15 alleged to have been committed by a public servant,except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority

which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure,1973 (2 of 1974),-

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earliest stage in the proceedings.

Explanation.- For the purposes of this section, -

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

4. The learned counsel for the petitioners has argued that the previous sanction is necessary for their prosecution for the offences under Sections 7, 12 and 13 of the Act. The factum that previous sanction has not been obtained is not disputed by the prosecution, but it was submitted on behalf of the prosecution that the accused persons were no more in Government service at the

time when the charge-sheet is filed and, therefore, sanction was not necessary and as such the sanction has not been obtained. It is not disputed by the learned counsel for the petitioners that on 5.7.95 when the charge-sheet was filed, the petitioners were not in Government service but the contention has been raised that they were very much in service on the date of the offence and on 21.1.95 when the F.I.R. was filed. It has been contended that cognizance of the offence had already been taken prior to the filing the charge-sheet and even if the charge-sheet is filed later on, the sanction was necessary because on the date of the commission of the offence, they were in service and they were removed only on 1.2.95. The learned counsel has argued with reference to Sections 154, 157, 158, 173 and 190 of Cr.P.C. and has submitted that the cognizance should be taken by the Court even before the charge-sheet is filed and, therefore, obtaining of the previous sanction under S.19 of the Act was necessary.

5. I have considered the submissions made at the Bar. S.154 of Cr.P.C. provides for the information in cognizable cases and S.157 provides the procedure for investigation. S.158 provides that the report sent to a Magistrate under S.157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government,by general or special order, appoints in this behalf and, therefore, there is nothing in Ss. 154, 157 and 158 of the Cr.P.C. so as to take the view that the cognizance to be taken by the Magistrate shall be taken before filing of the charge-sheet. S.173 deals with the question of report of police officer on completion of investigation. It is under S.173(2) that the officer incharge of the Police Station has to forward the report to the Magistrate empowered to take cognizance of the offence on a police report and the report has to be in the form prescribed by the State Government stating the items at (a) to (g) under S.173(2). S.190 provides for the cognizance of offence by Magistrate and the Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence, upon a police report of such facts and upon information received from any person other than a police officer,or upon his own knowledge, that such offence has been committed. Thus the Police report,as mentioned in S.190(1)(b), certainly has reference to the report of the police officer under S.158 read with S.173 Cr.P.C. The reading of all these relevant Sections make it clear that prior to the stage of submission of charge-sheet, the Court is not concerned with the question of taking cognizance of the offence.

Prior to the stage of the submission of the charge-sheet by the Police, the Court is concerned with the questions with regard to bail or remand and matters of allied nature, but, unless the whole investigation report is there, in case where the report is made by the police after investigation, there is no question of cognizance being taken prior to the submission of the charge-sheet. In the facts of the present case, even as a question of fact, it has not been shown that the cognizance of the offence could be taken prior to the filing of the charge-sheet and the fact situation is that on 5.7.95 when the charge-sheet was filed, the petitioners were no more in Government service, which is rather an admitted position. S.190 relates to cognizance of offences by Magistrate, as it appears under Chapter XIV of Cr.P.C. i.e. Conditions Requisite For Initiation Of Proceedings, is reproduced as under:

"190 (1) Subject to the provisions of this Chapter, any Magistrate of the first class,and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

It will be thus found that the contentions raised on behalf of the petitioners do not find support from any of the provisions on which reliance has been placed by the learned counsel.

6. Even otherwise, it is clearly discernible from the language of S.19 of the Act itself that the embargo of previous sanction for taking cognizance in cases which are covered under S.19(1)(c) has to be pressed into service only when the person committing the offence, as a public servant, is in service. S.19(1)(c) says, 'in the

case of any other person, or the authority competent to remove him from his office'. The words, 'authority competent to remove him from his office' clearly show that person has to be in service for the purposes of previous sanction and only then the question of competence of authority to remove him from service would arise. Once the person has already been removed from service, there is no question of complying with S.19(1)(c) of the Act and the case of the present petitioners would be covered only under S.19(1)(c) of the Act. It may also be pointed out that the Prevention of Corruption Act is a special enactment and in the Cr.P.C. there is an analogous provision in SA.197 requiring sanction for prosecution of Judges and public servants. In S.197 of Cr.P.C. both the cases have been covered i.e. in case where the person who is employed or, as the case may be, was at the time of commission of the alleged offence employed; whereas S.19 of the Act does not refer to the words, 'was at the time of commission of the alleged offence employed'. Thus the absence of the cases of ex or past employees is conspicuous in the phraseology of S.19 of the Act. I have, therefore, no hesitation in holding that under S.19 of the Act, the previous sanction for prosecution is not at all necessary in cases where the offender, who may be a public servant at the time of the commission of the offence, has ceased to be in Government service or has ceased to be a public servant at the time when the charge-sheet is filed. The previous sanction is necessary only if the offender - public servant continues to be in service. Once he ceases to be a public servant, the embargo of the previous sanction automatically stands lifted and this embargo against the prosecution of the person, who has ceased to be a public servant, is not at all available to such person, merely because he was a public servant at the time when the offence was committed or at the time when the F.I.R. was lodged. The Court taking cognizance of the offence has to apply its mind on the question of previous sanction only when the charge-sheet is filed before the Court and at that time the Court has to see as to whether the previous sanction is there or not in case the person continues to be a public servant or as and when such a question is raised before the Court after the filing of the charge-sheet.

7. For the reasons, as aforesaid, I do not find any infirmity in the order dated 24.9.97 passed by the Special Judge, City Civil Court No.10, Ahmedabad in Special Case No.25 of 1995. There is no force in this Criminal Revision Application filed under S.397 of Cr.P.C. read with S.27 of the Prevention of Corruption

Act and the same is hereby dismissed. Rule is hereby discharged.

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